RECENT DECISIONS

CARRIERS—BILLS OF LADING LIMITING LIABILITY FOR LOSS IN TRANSIT HELD NOT CONTRARY TO FEDERAL COMMERCE ACT WHERE SHIPMENT WAS INTENDED FOR EXPORT TO NON-ADJACENT FOREIGN COUNTRY.—Several carloads of grain were shipped from various points in other States to a seaport of one State, there to be loaded in boats and shipped to a non-adjacent foreign country. In each of the bills of lading the consignment to which it referred was described as being "for export". While in the course of railway conveyance to the said port, the several carloads of grain were destroyed by accidents, and the defendant railroad company, on whose line the losses occurred, paid to the plaintiffs, the owners of the grain, the value of the grain at the time and place of shipment. This was the measure of damages prescribed by the bills of lading under which the grain was being transported, but it did not fully compensate the plaintiffs for the losses actually sustained. In a suit by the plaintiffs to recover for losses in addition to those for which payment was made. *Held*, defendant not liable. *Fahey et al.* v. *Baltimore & O. R. Co.* (Md.), 114 Atl. 905 (1921).

At common law, common carriers engaged in interstate commerce could limit to a reasonable extent their common-law liability, but could not exempt themselves from loss or damage caused by their own negligence. *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491, 44 L. R. A. (N. S.) 257 (1913); *Texas, etc., R. Co.* v. *Payne*, 15 Tex. Civ. App. 58, 38 S. W. 366 (1896). But by the Federal Interstate Commerce Act and its amendments, if a shipment is intended for transportation from one State to another, or for export to an adjacent foreign country, the carrier is prohibited from stipulating against recovery of less than the full amount of the actual loss or damage to the property in transit. U. S. COMP. ST. 1916, § 8604a. This statute and its amendments does not apply, however, in the case of shipments to non-adjacent foreign countries, that is, foreign commerce. *J. H. Hamlen & Sons* v. *Illinois Cent. R. Co.*, 212 Fed. 324 (1914); *Houston East and West Texas R. Co.* v. *Inman et al.* (Tex. Civ. App.), 134 S. W. 275 (1911).

In the instant case, the grain was intended for export to a non-adjacent foreign country, but was destroyed by accident before it reached the seaport. It is, however, the nature of the traffic, and not its accidents which determines whether it is interstate or foreign commerce. *Railroad Commission* v. *Texas & P. R. Co.*, 229 U. S. 336 (1913). And a shipment of goods is ascribed to interstate or foreign commerce when it is started for its destination in another State or foreign country, or has been delivered to a carrier for transportation; this is the same whether the goods are shipped on through bills of lading or on an initial bill only to the terminal where they are to be delivered to a carrier for the foreign destination. *Coe* v. *Errol*, 116 U. S. 517 (1886); *Southern Pac. Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498 (1911). According to this

doctrine it has been held that a shipment of lumber from an interior point in a State to a seaport of that State, and intended by the purchaser for export, was in foreign commerce as soon as it started for the seaport. *Texas & N. O. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111 (1913). The instant case seems to fall clearly within the rule laid down in the last case cited, and thus the limitation of liability in the bills of lading would be valid.

The point at issue here does not seem to have been passed on in Virginia.

CONFLICT OF LAWS—WHAT LAW GOVERNS THE DETERMINATION OF THE HEIRS OF A BENEFICIARY DYING A RESIDENT OF ONE STATE WHERE TRUST DEED EXECUTED BY SETTLOR DOMICILED IN ANOTHER STATE.—The settlor, a resident of Massachusetts, conveyed real property situated in New York, to a trustee who was to pay the income from the property to a beneficiary for life and at the death of the beneficiary to convey the property to her heirs at law. At the time of this trust deed the settlor, trustee, and the beneficiary resided in Massachusetts. Upon the death of the beneficiary, who had since become a resident of New York, the trustee brought an action in New York to determine whether the law of Massachusetts, the domicile of the settlor, or the law of New York, the situs of the property, and the domicile of the beneficiary at her death, should determine who were the heirs at law of the deceased beneficiary. *Held*, the law of the domicile of the settlor should control. *Cary* v. *Carman*, 190 N. Y. S. 193 (1921).

It is well settled that when a man dies intestate the heirs to his real property are determined by the *lex rei sitae*. *Grimball* v. *Patton*, 70 Ala. 626 (1881). And the distributees of his personalty are determined by the *lex domicilii*. *Pipon* v. *Pipon*, Amb. 25, 27 Eng. Rep. R. 14 (1744); *Vroom* v. *Van Horne*, 10 Paige (N. Y.) 549, 42 Am. Dec. 94 (1884). It is also well settled that the laws of the testator's domicile govern the construction of his will, so that where a testator domiciled in one State leaves real property in another State by will to his heirs, the law of the testator's domicile determines who are his heirs. *Guerard* v. *Guerard*, 73 Ga. 506 (1884). And the same principle applies to trust instruments. *Brown* v. *Ransey*, 74 Ga. 210 (1884). Likewise where a compromise agreement to determinate the contest of a will was executed in one State, then the laws of that State govern in determining who are the heirs of the beneficiary who had acquired a domicile in another State at the time of his death. *Brandeis* v. *Atkins*, 204 Mass. 471, 90 N. E. 861, 26 L. R. A. (N. S.) 230 (1910).

Where, however, the donor is domiciled in one State and the beneficiary, who is the foundation of the class to be determined, is a resident of another State the authorities are not in accord as to which law determines who are the heirs of the beneficiary. One case is to the effect that the law of the beneficiary's domicile at his death should control as to personal property so conveyed. *Price* v. *Tally's Adm'rs*, 10 Ala. 946 (1847). And so where a life interest in personal property was left by will to a beneficiary residing in another State, with remainder over